

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DWAYNE HARRIS,

Plaintiff,

-against-

CORRECTION OFFICER DIPERRI,
CORRECTION OFFICER MURDOCK, CAPTAIN
SANTANA, JOHN DOE.

Defendants.

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**STIPULATION OF
SETTLEMENT AND ORDER OF
DISMISSAL**

10-CV-9475(BSJ)(KNF)

WHEREAS, plaintiff commenced this action by filing a complaint on or about December 16, 2010, alleging that the defendants violated plaintiff's federal civil and state common law rights; and

WHEREAS, defendants Daniel DiPerri, Omar Murdock, and Robert Santana have denied any and all liability arising out of plaintiff's allegations; and

WHEREAS, the parties now desire to resolve the issues raised in this litigation, without further proceedings and without admitting any fault or liability;

WHEREAS, plaintiff agrees to settle this matter on the terms set forth below;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

1. The above-referenced action is hereby dismissed against defendants, with prejudice, and without costs, expenses, or attorneys' fees in excess of the amount specified in paragraph "2" below.

2. The City of New York hereby agrees to pay plaintiff Dwayne Harris, the sum of Five Hundred (\$500.00) Dollars in full satisfaction of all claims, including claims for

costs, expenses and attorneys' fees. In consideration for the payment of this sum, plaintiff agrees to dismissal of all the claims against the defendants and to release the defendants and any present or former employees and agents of the City of New York or any entity represented by the Office of the Corporation Counsel, from any and all liability, claims, or rights of action alleging a violation of plaintiff's civil rights, from the beginning of the world to the date of the General Release, including claims for costs and expenses.

3. Plaintiff shall execute and deliver to defendants' attorney all documents necessary to effect this settlement, including, without limitation, a General Release based on the terms of paragraph "2" above and an Affidavit of Status of Liens. If Medicare has provided payment and/or benefits for any injury or condition that is the subject of this lawsuit, prior to tendering the requisite documents to effect this settlement, plaintiff shall have notified Medicare and shall submit with the settlement documents a Medicare final demand letter for conditional payments. A Medicare Set-Aside Trust may also be required if future anticipated medical costs are found to be necessary pursuant to 42 U.S.C. § 1395y(b) and 42 C.F.R. §§ 411.22 through 411.26.

4. Nothing contained herein shall be deemed to be an admission by the defendants that they have in any manner or way violated plaintiff's rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules, regulations or bylaws of any department or subdivision of the City of New York. Neither the filing of the complaint in this action, the allegations in the complaint, nor the settlement of this action shall be asserted by plaintiff or his counsel in any other litigation or proceeding as evidence of wrongful conduct on the part of the City of New York or any present or former employees or agents of the

City of New York. This stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations.

5. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York or any agency thereof.

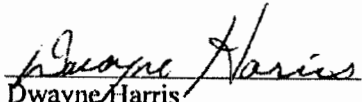
6. Plaintiff agrees to hold harmless defendants regarding any liens or past and/or future Medicare payments, presently known or unknown, in connection with this matter. If conditional and/or future anticipated Medicare payments have not been satisfied, defendants reserve the right to issue a multiparty settlement check naming Medicare as a payee or to issue a check to Medicare directly based upon Medicare's final demand letter.

7. This Stipulation and Order contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and Order regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

Dated: New York, New York
November 18, 2011

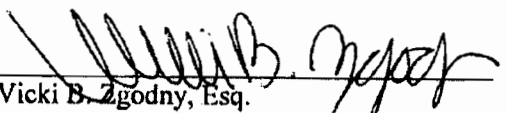
Dwayne Harris
1618 East 54th Street, Apartment #1
Brooklyn, NY, 11236
Plaintiff Pro Se

By:


Dwayne Harris
Plaintiff Pro Se

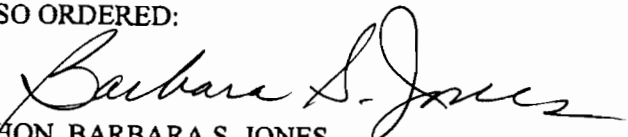
MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
*Attorney for Defendants DiPerri, Murdock,
and Santana*
100 Church Street, Rm. 3-187
New York, New York 10007
(212) 788-8084

By:


Vicki B. Zgodny, Esq.
Assistant Corporation Counsel

Dated: New York, New York
Nov. 21, 2011

SO ORDERED:


HON. BARBARA S. JONES
UNITED STATES DISTRICT JUDGE





MICHAEL A. CARDOZO
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
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NEW YORK, NY 10007

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November 18, 2011

VIA FIRST CLASS MAIL

Honorable Barbara S. Jones
United States District Judge
Southern District of New York
500 Pearl Street, Room 2510
New York, NY 10007

Re: Dwayne Harris v. Diperri, et al., 10-CV-9475 (BSJ)(KNF)

Your Honor:

As counsel for defendant in the above-referenced action, I write to inform the Court that the parties have reached a settlement. In connection therewith, I enclose a fully-executed STIPULATION OF SETTLEMENT AND ORDER OF DISCONTINUANCE to be so ordered by Your Honor. We respectfully request that Your Honor endorse the enclosed STIPULATION.

We thank the Court for its time and attention to this request.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Vicki B. Zgodny".

Vicki B. Zgodny
Assistant Corporation Counsel
Special Federal Litigation Division

cc: Mr. Dwayne Harris (Via First Class Mail)
Plaintiff Pro Se
1618 East 54th Street, Apartment #1
Brooklyn, NY, 11236